HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2303 OF 2000.

Sudam Baburao Thokal. ..Petitioner.

Versus.

State of Maharashtra & ors. ..Respondents.

Shri. N. V. Bandiwadekar for the Petitioners.

Smt. S.S.Bhende, AGP for the Respondent Nos. 1 & 2 -State.

CORAM: S.B.MHASE &
D.G.KARNIK, JJ.

DATE : FEBRUARY 1, 2006.

P.C.

1. Heard learned counsel for the petitioner and learned A.G.P. for the respondent Nos. 1 & 2. None appears for the respondent Nos. 3 & 4. Learned counsel for the respondent No.5 is absent when called.

2. The Petitioner is graduate and possesses B.A and B.Ed degrees. The petitioner was initially appointed as a part-time teacher by the respondent No.4. Subsequently, he was appointed as a full time assistant teacher with effect from 10th August 1990 and was granted a graduate pay-scale. Petitioner's appointment as well as his pay scale was approved by

the respondent No.2.

3. It appears that the respondent No.5 was appointed as assistant teacher prior to the petitioner and granted a pay scale of diploma holders. Though the respondent no.5 also possessed necessary degree qualification, he was not granted graduate pay scale which was granted to the petitioner. It appears that the respondent no.5 made an application to the respondent No.2 making a grievance that the respondent No. 4 had granted graduate pay scale to the petitioner without granting him similar pay scale though he was senior to the petitioner. After issuing notice to the respondent Nos. 3 & 4, the respondent No.2 allowed the application of the respondent no.5 and directed that graduate teacher's pay scale be granted to the respondent No.5 and withdrew the sanction of gradute teacher's pay scale given to the petitioner. This order was passed without notice to the petitioner and without hearing him.

4. Since the order dated July 12, 1999 affects the petitioner adversely the respondent no.2 ought to have issued notice and granted hearing to the petitioner. **In Bhagwan Shukla v/s. Union of**

India & Ors reported in AIR-1994 SC 2480, the Supreme Court has held that where an order is likely to reduce the pay of a person he must be granted hearing before passing the order. Since the order of the respondent No. 2 dated July 12, 1999 has the effect of reducing the pay scale of the petitioner he ought to have been heard in the matter before the said order was made. As the petitioner was not granted any opportunity of hearing that order cannot be sustained. Consequent communication dated April 13, 2000 sent by the respondent No.3 to the petitioner also cannot be sustained.

5. For these reasons, the petition would have to be allowed and the matter would have to be remanded back to the respondent No.2 for passing fresh orders, if necessary, after proper hearing. Needless to say that the notice of the enquiry would be issued to the petitioner and he would be heard before passing any order adversely affecting him.

6. Accordingly, the petition is allowed. The order dated July 12, 1999 passed by the respondent No.2 as also the communication dated April 13, 2000 issued by the respondent No.3 in pursuance of the said order are quashed and set aside. The matter is

remanded back to the respondent No.2 for passing fresh orders, if any, after hearing the petitioner and the respondent Nos. 3, 4 & 5. The respondent No. 2 shall decide the complaint made by the respondent No. 5 after granting an opportunity of hearing to the petitioner and the respondent Nos. 3 to 5. Rule is made absolute to the extent mentioned above.

7. In the facts and circumstances of the case the parties shall bear and pay their own costs.

(D.G.KARNIK,J.) **(S.B.MHASE, J.)**